

1 WO

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Dawn D Williamson,
10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,
14 Defendant.

No. CV-19-01803-PHX-ESW

ORDER

15
16 Pending before the Court is Dawn D Williamson's ("Plaintiff") appeal of the Social
17 Security Administration's denial of her application for disability insurance benefits. Under
18 42 U.S.C. § 405(g), the Court has the power to enter, based upon the pleadings and
19 transcript of the record, a judgment affirming, modifying, or reversing the decision of the
20 Commissioner of Social Security, with or without remanding the case for a rehearing. Both
21 parties have consented to the exercise of U.S. Magistrate Judge jurisdiction. (Doc. 12).

22 Albeit for different reasons, the parties agree that the Administrative Law Judge's
23 ("ALJ") decision does not properly evaluate the medical opinions concerning Plaintiff's
24 limitations. (Docs. 16, 26, 27). The Commissioner requests that the Court remand this
25 matter for further proceedings. Plaintiff asserts that the matter should be remanded for an
26 immediate award of benefits. In moving for remand for further proceedings, the
27 Commissioner does not address Plaintiff's argument that the ALJ failed to provide legally
28 valid reasons for discounting her symptom testimony. (Doc. 16 at 21-27). Plaintiff asserts

1 that this error alone requires remand for an award of benefits. (*Id.* at 27).

2 When evaluating the credibility of a plaintiff's testimony regarding subjective pain
3 or symptoms, the ALJ must engage in a two-step analysis. *Vasquez v. Astrue*, 572 F.3d
4 586, 591 (9th Cir. 2009). In the first step, the ALJ must determine whether the claimant
5 has presented objective medical evidence of an underlying impairment "which could
6 reasonably be expected to produce the pain or other symptoms alleged." *Lingenfelter v.*
7 *Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007). The plaintiff does not have to show that the
8 impairment could reasonably be expected to cause the severity of the symptoms. Rather,
9 a plaintiff must only show that it could have caused some degree of the symptoms. *Smolen*
10 *v. Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996).

11 If a plaintiff meets the first step, and there is no affirmative evidence of malingering,
12 the ALJ can only reject a plaintiff's testimony about the severity of his or her symptoms
13 by offering specific, clear, and convincing reasons. *Lingenfelter*, 504 F.3d at 1036. The
14 ALJ cannot rely on general findings. The ALJ must identify specifically what testimony
15 is not credible and what evidence undermines the plaintiff's complaints. *Berry v. Astrue*,
16 622 F.3d 1228, 1234 (9th Cir. 2010). In weighing a plaintiff's credibility, the ALJ can
17 consider many factors including: a plaintiff's reputation for truthfulness, prior inconsistent
18 statements concerning the symptoms, unexplained or inadequately explained failure to
19 seek treatment, and the plaintiff's daily activities. *Smolen*, 80 F.3d at 1284; *see also* 20
20 C.F.R. § 404.1529(c)(4) (Social Security must consider whether there are conflicts between
21 a claimant's statements and the rest of the evidence).

22 Here, the ALJ found that Plaintiff's medically determinable impairments could
23 reasonably be expected to cause her alleged symptoms, but concluded that Plaintiff's
24 "statements concerning the intensity, persistence and limiting effects of these symptoms
25 are not entirely consistent with the medical evidence and other evidence in the record for
26 the reasons explained in this decision." (A.R. 20). As discussed below, the ALJ committed
27 harmful error in discounting Plaintiff's symptom testimony.

28 In explaining why he found Plaintiff's testimony not credible, the ALJ first noted

1 that Plaintiff ceased working because she was laid off, not because of disabling conditions.
2 (*Id.*). A disability claimant's reason for leaving employment is a valid consideration in
3 evaluating the claimant's symptom testimony. *See Bruton v. Massanari*, 268 F.3d 824,
4 828 (9th Cir. 2001); *Page v. Colvin*, 620 F. App'x 605, 605 (9th Cir. 2015) (an ALJ may
5 discredit a claimant's testimony by citing a claimant's nondisability reasons for leaving
6 employment immediately preceding the alleged onset date of disability). Here, however,
7 Plaintiff explained to the ALJ: "my boss allowed me to just answer the phones for a little
8 while until, you know, they were about to close. He allowed me to do that because he
9 knew the situation." (A.R. 50). The Court finds that Plaintiff's reason for leaving her last
10 job is a valid consideration in weighing Plaintiff's symptom testimony. Yet, as explained
11 below, the other reasons the ALJ provided for discounting Plaintiff's symptom testimony
12 are not clear and convincing. Because the record suggests that Plaintiff's employer made
13 significant accommodations for Plaintiff before she was laid off, the Court does not find
14 Plaintiff's reason for leaving is a sufficient sole basis on which to discount her testimony.

15 As another reason for discounting Plaintiff's symptom testimony, the ALJ stated
16 that the medical portion of the record is "somewhat sparse, which undermines the
17 claimant's disability claim to some degree because one would expect such an individual to
18 have obtained more extensive treatment for conditions which are allegedly disabling."
19 (A.R. 21). Although an ALJ may consider a lack of objective evidence as one element in
20 his or her analysis, a claimant's testimony of disabling symptoms cannot be discredited
21 "merely because [it is] unsupported by objective evidence." *See Lester*, 81 F.3d at 834;
22 *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) ("[O]nce the claimant produces
23 objective medical evidence of an underlying impairment, [the ALJ] may not reject a
24 claimant's subjective complaints based solely on a lack of objective medical evidence to
25 fully corroborate the alleged severity of pain."). Further, "the fact that treatment may be
26 routine or conservative is not a basis for finding subjective symptom testimony unreliable
27 absent discussion of the additional, more aggressive treatment options the ALJ believes are
28 available." *Moon v. Colvin*, 139 F.Supp.3d 1211, 1220 (D. Or. 2015) (citing *Lapeirre*—

1 *Gutt v. Astrue*, 382 F. App'x 662, 664 (9th Cir. 2010)) (“A claimant cannot be discredited
2 for failing to pursue non-conservative treatment options where none exist.”). The Court
3 finds that the ALJ’s second reason for discounting Plaintiff’s symptom testimony does not
4 satisfy the specific, clear, and convincing standard.

5 The ALJ’s decision also states that:

6 In terms of activities of daily living, the claimant complained
7 of continuing significant impacts on activities of daily living
8 due to her multiple medical conditions. She is able to complete
9 self-care activities including meals, hygiene, and light
10 housework, but she said these tasks are progressively difficult
11 due to her multiple medical conditions and that they take an
12 extended period of time to complete. She is not confined to
13 bed and admits to frequent difficulties sleeping due to her
14 multiple medical conditions. She does hold a valid Arizona
15 driver’s license and states that she has not driven a vehicle
16 since September 2017 due to poor visual acuity. She states that
17 she no longer has any hobbies in which she participates.
Despite her alleged restrictions, elsewhere in the record the
claimant reported taking care of her elderly mother (B8A/10,
B8E). In December 2017, the claimant reported that she
planned on visiting her husband in Jamaica, which suggests her
restrictions and limitations are less disabling than alleged
(B24F/2).

18 (A.R. 21). “[D]isability claimants should not be penalized for attempting to lead normal
19 lives in the face of their limitations.” *Reddick*, 157 F.3d at 722. The ALJ’s decision does
20 not adequately explain how Plaintiff’s daily activities translate to the ability to sustain
21 competitive employment on a full-time basis. *See Garrison v. Colvin*, 759 F.3d 995, 1016
22 (9th Cir. 2014) (stating that the Ninth Circuit has “repeatedly warned that ALJs must be
23 especially cautious in concluding that daily activities are inconsistent with testimony about
24 pain, because impairments that would unquestionably preclude work and all the pressures
25 of a workplace environment will often be consistent with doing more than merely resting
26 in bed all day”). For the above reasons, the Court finds that the ALJ committed harmful
27 legal error in discounting Plaintiff’s symptom testimony.

28 Ninth Circuit jurisprudence “requires remand for further proceedings in all but the

1 rarest cases.” *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101 n.5 (9th Cir.
2 2014). The Ninth Circuit has adopted a test to determine when a case should be remanded
3 for payment of benefits in cases where an ALJ has improperly rejected claimant testimony
4 or medical opinion evidence. *Id.* at 1100-01; *Garrison*, 759 F.3d at 1020. This test is
5 commonly referred to as the “credit-as-true” rule, which consists of the following three
6 factors:

- 7 1. Has the ALJ failed to provide legally sufficient reasons for
8 rejecting evidence, whether claimant testimony or medical
9 opinion? *Treichler*, 775 F.3d at 1100-01.
- 10 2. Has the record been fully developed, are there outstanding
11 issues that must be resolved before a disability determination
12 can be made, or would further administrative proceedings be
13 useful? *Id.* at 1101. To clarify this factor, the Ninth Circuit
14 has stated that “[w]here there is conflicting evidence, and not
15 all essential factual issues have been resolved, a remand for
16 an award of benefits is inappropriate.” *Id.*
- 17 3. If the improperly discredited evidence were credited as true,
18 would the ALJ be required to find the claimant disabled on
19 remand? *Id.*; *Garrison*, 759 F.3d at 1020.

20 Where a court has found that a claimant has failed to satisfy one of the factors of the
21 credit-as-true rule, the court does not need to address the remaining factors. *Treichler*, 775
22 F.3d at 1107 (declining to address final step of the rule after determining that the claimant
23 has failed to satisfy the second step). Moreover, even if all three factors are met, a court
24 retains the discretion to remand a case for additional evidence or to award benefits. *Id.* at
25 1101-02. A court may remand for further proceedings “when the record as a whole creates
26 serious doubt as to whether the claimant is, in fact, disabled within the meaning of the
27 Social Security Act.” *Garrison*, 759 F.3d at 1021. In *Treichler*, the Ninth Circuit noted
28 that “[w]here an ALJ makes a legal error, but the record is uncertain and ambiguous, the
proper approach is to remand the case to the agency.” 775 F.3d at 1105.

It is appropriate to remand this matter to the Commissioner for further proceedings
as the record creates a serious doubt as to whether Plaintiff suffers from impairments that

1 would preclude her from working. For instance, certain medical records indicate that
2 Plaintiff's asthma is well-controlled with Singulair. (A.R. 423, 554). A June 13, 2017
3 record states that Plaintiff is "doing well . . . She has been walking daily. Just got married
4 in Jamaica. . . . Current symptoms: The patient is experiencing no shortness of breath, no
5 paroxysmal nocturnal dyspnea, no orthopnea and no pedal edema. The patient has no new
6 complaints." (A.R. 479). Numerous other records indicate a lack of disabling symptoms.
7 (See, e.g., 532, 535, 539, 543, 555-56, 584-85). Accordingly,

8 **IT IS ORDERED** reversing the decision of the Commissioner of Social Security
9 and remanding for further administrative proceedings. The ALJ shall issue a new decision
10 that is consistent with applicable law. The ALJ, however, is not precluded from reopening
11 the hearing to receive additional evidence if deemed appropriate.

12 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment
13 accordingly.

14 Dated this 28th day of January, 2020.

15
16
17 

18

Honorable Eileen S. Willett
United States Magistrate Judge
19
20
21
22
23
24
25
26
27
28